

104TH CONGRESS  
1ST SESSION

# S. 557

To prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments.

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 1995

Mr. DORGAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Derivatives Limita-  
5       tions Act of 1995”.

6       **SEC. 2. INSURED DEPOSITORY INSTITUTIONS.**

7       The Federal Deposit Insurance Act (12 U.S.C. 1811  
8       et seq.) is amended by adding at the end the following  
9       new section:

1 **“SEC. 45. DERIVATIVE INSTRUMENTS.**

2 “(a) DERIVATIVES ACTIVITIES.—

3 “(1) GENERAL PROHIBITION.—Except as pro-  
4 vided in paragraph (2), neither an insured deposi-  
5 tory institution, nor any affiliate thereof, may pur-  
6 chase, sell, or engage in any transaction involving a  
7 derivative financial instrument for the account of  
8 that institution or affiliate.

9 “(2) EXCEPTIONS.—

10 “(A) HEDGING TRANSACTIONS.—An in-  
11 sured depository institution may purchase, sell,  
12 or engage in hedging transactions to the extent  
13 that such activities are approved by rule, regu-  
14 lation, or order of the appropriate Federal  
15 banking agency issued in accordance with para-  
16 graph (3).

17 “(B) SEPARATELY CAPITALIZED AFFILI-  
18 ATE.—A separately capitalized affiliate of an  
19 insured depository institution that is not itself  
20 an insured depository institution may purchase,  
21 sell, or engage in a transaction involving a de-  
22 rivative financial instrument if such affiliate  
23 complies with all rules, regulations, or orders of  
24 the appropriate Federal banking agency issued  
25 in accordance with paragraph (3).

1           “(C) DE MINIMIS INTERESTS.—An insured  
2           depository institution may purchase, sell, or en-  
3           gage in transactions involving de minimis inter-  
4           ests in derivative financial instruments for the  
5           account of that institution to the extent that  
6           such activity is defined and approved by rule,  
7           regulation, or order of the appropriate Federal  
8           banking agency issued in accordance with para-  
9           graph (3).

10          “(D) EXISTING INTERESTS.—During the  
11          3-month period beginning on the date of enact-  
12          ment of this section, nothing in this section  
13          shall be construed—

14               “(i) as affecting an interest of an in-  
15               sured depository institution in any deriva-  
16               tive financial instrument that existed on  
17               the date of enactment of this section; or

18               “(ii) as restricting the ability of the  
19               institution to acquire reasonably related in-  
20               terests in other derivative financial instru-  
21               ments for the purpose of resolving or ter-  
22               minating an interest of the institution in  
23               any derivative financial instrument that ex-  
24               isted on the date of enactment of this  
25               section.

1           “(3) ISSUANCE OF RULES, REGULATIONS, AND  
2           ORDERS.—The appropriate Federal banking agency  
3           shall issue appropriate rules, regulations, and orders  
4           governing the exceptions provided for in paragraph  
5           (2), including—

6                   “(A) appropriate public notice require-  
7                   ments;

8                   “(B) a requirement that any affiliate de-  
9                   scribed in paragraph (2)(B) shall clearly and  
10                  conspicuously notify the public that none of the  
11                  assets of the affiliate, nor the risk of loss asso-  
12                  ciated with the transaction involving a deriva-  
13                  tive financial instrument, are insured under  
14                  Federal law or otherwise guaranteed by the  
15                  Federal Government or the parent company of  
16                  the affiliate; and

17                  “(C) any other requirements that the ap-  
18                  propriate Federal banking agency considers to  
19                  be appropriate.

20           “(b) DEFINITIONS.—For purposes of this section—

21                   “(1) the term ‘derivative financial instrument’  
22                  means—

23                           “(A) an instrument the value of which is  
24                           derived from the value of stocks, bonds, other  
25                           loan instruments, other assets, interest or cur-

1           rency exchange rates, or indexes, including  
2           qualified financial contracts (as defined in sec-  
3           tion 11(e)(8)); and

4           “(B) any other instrument that an appro-  
5           priate Federal banking agency determines, by  
6           regulation or order, to be a derivative financial  
7           instrument for purposes of this section; and

8           “(2) the term ‘hedging transaction’ means any  
9           transaction involving a derivative financial instru-  
10          ment if—

11           “(A) such transaction is entered into in  
12           the normal course of the institution’s business  
13           primarily—

14           “(i) to reduce risk of price change or  
15           currency fluctuations with respect to prop-  
16           erty that is held or to be held by the insti-  
17           tution; or

18           “(ii) to reduce risk of interest rate or  
19           price changes or currency fluctuations with  
20           respect to loans or other investments made  
21           or to be made, or obligations incurred or to  
22           be incurred, by the institution; and

23           “(B) before the close of the day on which  
24           such transaction was entered into (or such ear-  
25           lier time as the appropriate Federal banking

1           agency may prescribe by regulation), the insti-  
 2           tution clearly identifies such transaction as a  
 3           hedging transaction.”.

4   **SEC. 3. INSURED CREDIT UNIONS.**

5           Title II of the Federal Credit Union Act (12 U.S.C.  
 6   1781 et seq.) is amended by adding at the end the follow-  
 7   ing new section:

8   **“SEC. 215. DERIVATIVE INSTRUMENTS.**

9           “(a) DERIVATIVE ACTIVITIES.—Except as provided  
 10   in subsection (b), neither an insured credit union, nor any  
 11   affiliate thereof, may purchase, sell, or engage in any  
 12   transaction involving a derivative financial instrument.

13          “(b) APPLICABILITY OF SECTION 44 OF THE FED-  
 14   ERAL DEPOSIT INSURANCE ACT.—Section 44 of the Fed-  
 15   eral Deposit Insurance Act shall apply with respect to in-  
 16   sured credit unions and affiliates thereof and to the Board  
 17   in the same manner that such section applies to insured  
 18   depository institutions and affiliates thereof (as those  
 19   terms are defined in section 3 of that Act) and shall be  
 20   enforceable by the Board with respect to insured credit  
 21   unions and affiliates under this Act.

22          “(c) DERIVATIVE FINANCIAL INSTRUMENT.—For  
 23   purposes of this section, the term ‘derivative financial in-  
 24   strument’ means—

1 “(1) an instrument the value of which is de-  
 2 rived from the value of stocks, bonds, other loan in-  
 3 struments, other assets, interest or currency ex-  
 4 change rates, or indexes, including qualified finan-  
 5 cial contracts (as such term is defined in section  
 6 207(c)(8)(D)); and

7 “(2) any other instrument that the Board de-  
 8 termines, by regulation or order, to be a derivative  
 9 financial instrument for purposes of this section.”.

10 **SEC. 4. BANK HOLDING COMPANIES.**

11 Section 3 of the Bank Holding Company Act of 1956  
 12 (12 U.S.C. 1842) is amended by adding at the end the  
 13 following new subsection:

14 “(h) DERIVATIVES ACTIVITIES.—

15 “(1) IN GENERAL.—A subsidiary of a bank  
 16 holding company may purchase, sell, or engage in  
 17 any transaction involving a derivative financial in-  
 18 strument for the account of that subsidiary if that  
 19 subsidiary—

20 “(A) is not an insured depository institu-  
 21 tion or a subsidiary of an insured depository in-  
 22 stitution; and

23 “(B) is separately capitalized from any af-  
 24 filiated insured depository institution.

1           “(2) APPLICABILITY OF SECTION 44 OF THE  
 2       FEDERAL DEPOSIT INSURANCE ACT.—Section 44 of  
 3       the Federal Deposit Insurance Act shall apply with  
 4       respect to bank holding companies and the Board in  
 5       the same manner that those subsections apply to an  
 6       insured depository institution (as such term is de-  
 7       fined in section 3 of that Act) and shall be enforce-  
 8       able by the Board with respect to bank holding com-  
 9       panies under this Act.

10           “(3) DERIVATIVE FINANCIAL INSTRUMENT.—  
 11       For purposes of this subsection, the term ‘derivative  
 12       financial instrument’ means—

13           “(A) an instrument the value of which is  
 14       derived from the value of stocks, bonds, other  
 15       loan instruments, other assets, interest or cur-  
 16       rency exchange rates, or indexes, including  
 17       qualified financial contracts (as such term is  
 18       defined in section 207(c)(8)(D)); and

19           “(B) any other instrument that the Board  
 20       determines, by regulation or order, to be a de-  
 21       rivative financial instrument for purposes of  
 22       this subsection.”.

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